

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT D. THORSON

Defendant.

CASE NO. CR16-277RSM

ORDER DENYING DEFENDANT'S
OBJECTIONS TO GOVERNMENT'S
SLIDESHOW AND DENYING
MOTION TO PRECLUDE
IMPEACHMENT WITH PRIOR
CONVICTIONS

This matter comes before the Court on Defendant Robert D. Thorson's Objections to the USA's Opening Slide Show (Dkt. #70) and his Motion to Preclude Impeachment with Prior Convictions (Dkt. #72). Mr. Thorson is charged in a two-count indictment with one count of Production of Visual Depictions of Minors Engaged in Sexually Explicit Conduct in violation of 18 U.S.C §§ 2251(a), (e), (Count 1), and one count of Possession of Visual Depictions of Minors engaged in Child Pornography in violation of 18 USC §§ 2252(a)(4)(B), (b)(2) (Count 2). Dkt. #1. Mr. Thorson objects to the use of five slides in the government's opening PowerPoint presentation. Dkt. #70 at 2-4. One slide ("Slide 28") contains a photograph of Mr. Thorson alongside photographs of the three alleged minor victims. *Id.* at 2. The remaining four slides ("Slides 23-26") contain images and excerpts of letters allegedly written by Mr. Thorson. *Id.*, Ex. A at 23-26. Mr. Thorson also seeks an order prohibiting the government from

ORDER DENYING DEFENDANT'S OBJECTIONS
TO GOVERNMENT'S SLIDESHOW AND
DENYING MOTION TO PRECLUDE
IMPEACHMENT WITH PRIOR CONVICTIONS -

1 impeaching him with evidence of his prior convictions. Dkt. #72 at 1. For the reasons discussed
2 herein, Mr. Thorson's objections (Dkt. #70) and motion (Dkt. #72) are DENIED.

3 Mr. Thorson's objection to the government's use of Slide 28 is DENIED. Contrary to
4 Mr. Thorson's assertions, the Court does not agree that Slide 28 is unfairly prejudicial. Images
5 of Mr. Thorson and the alleged minor victims are not inadmissible evidence, and placing
6 Mr. Thorson's photograph on the same slide as that of the alleged victims' photographs is not
7 improper argument. Mr. Thorson argues that Slide 28 is "likely to inflame resentment and
8 present a prejudicial visual impression on the jury," but, aside from this conclusory statement,
9 Mr. Thorson does not explain how photographs of persons to be mentioned in the government's
10 opening statement could engender such feelings. Unlike in *In re Glassman*, a case cited by
11 Mr. Thorson in support of this objection, the government has not altered the photographs in Slide
12 28 to improperly express an opinion with respect to Mr. Thorson's guilt. 286 P.3d 673, 706-707
13 (Wash. 2012). Mr. Thorson's objection to Slide 28 is accordingly DENIED.

14 Mr. Thorson's objection to the government's use of Slides 23-26 is also DENIED. As an
15 initial matter, the Court notes that Mr. Thorson's objection to the use of letters allegedly written
16 by Mr. Thorson is untimely. The pre-trial motions deadline was set for January 9, 2017.
17 Dkt. #13. Although the government provided these letters to Mr. Thorson in discovery,
18 Mr. Thorson failed to object to the use of these letters until the eve of trial. As previously noted
19 by the Court in addressing Mr. Thorson's untimely motion to dismiss (Dkt. #54) the Court need
20 not consider untimely motions. Fed. R. Crim. P. 12(c)(3). However, even if timely, Mr.
21 Thorson's objection nonetheless warrants denial because the letters and excerpts contained in
22 Slides 23-26, although "other act" evidence, are admissible as evidence of consciousness of guilt.

23
24 ORDER DENYING DEFENDANT'S OBJECTIONS
TO GOVERNMENT'S SLIDESHOW AND
DENYING MOTION TO PRECLUDE
IMPEACHMENT WITH PRIOR CONVICTIONS -

1 *E.g., Phillips v. United States*, 334 F.2d 589, 592 (9th Cir. 1964) (allowing evidence of threat
2 made by defendant because it showed consciousness of guilt).

3 Finally, the Court DENIES Mr. Thorson's Motion to Preclude Impeachment with Prior
4 Convictions (Dkt. #72). Prior to bringing his motion to preclude impeachment with prior
5 convictions, the Court granted Mr. Thorson's motion to exclude evidence of his prior convictions
6 and imprisonment. *See* Dkts. #20 and #46. In response to that motion, the government agreed
7 not to offer prior conviction evidence at trial, but reserved the right to revisit the issue if it
8 became necessary. Dkt. #28 at 2. The government also agreed to raise any Rule 609 issues with
9 the Court outside the presence of the jury. *Id.* The government now reiterates that this issue is
10 best reserved for trial. Dkt. #75 at 6. The Court agrees with the government. If the government
11 seeks to impeach Mr. Thorson with evidence of his prior convictions, the Court will address
12 those issues at trial.

13 For the reasons discussed herein, Mr. Thorson's objections (Dkt. #70) to Slides 23, 24,
14 25, 26, and 28 of the government's opening PowerPoint presentation are DENIED. Mr.
15 Thorson's Motion to Preclude Impeachment with Prior Convictions (Dkt. #72) is also DENIED.

16
17 Dated this 7 day of February, 2017.

18
19 

20 RICARDO S. MARTINEZ
21 CHIEF UNITED STATES DISTRICT JUDGE
22
23

24 ORDER DENYING DEFENDANT'S OBJECTIONS
TO GOVERNMENT'S SLIDESHOW AND
DENYING MOTION TO PRECLUDE
IMPEACHMENT WITH PRIOR CONVICTIONS -